IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/12/2002

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THE HON'BLE MR.JUSTICE V.S. SIRPURKAR
AND
THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Habeas Corpus Petition No.1123 of 2002

A. Syed Ibrahim .. Petitioner

-Vs-

1. The State of Tamil Nadu
rep. by the Secretary to Govt.
Public (SC) Department
Fort St.George
Chennai 600 009.

2. The Union of India
rep. by the Secretary to Govt.
Ministry of Finance
Department of Revenue
(COFEPOSA Unit)
Central Economic Intelligence Bureau
Janpath Bhavan, Janpath
New Delhi 110 001.

3. The Superintendent of Central Prison
Central Prison
Chennai 3. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Habeaus Corpus as stated therein.

For Petitioner : Mr.K.A. Jabbar

For Respondents 1&3 : Mr.I. Subramanian
Public Prosecutor

For Respondent 2 : Mr.C. Kulandaivelu
For Ms. Vanathi Srinivasan, ACGSC

:O R D E R

(The order of the Court was made by

V.S.SIRPURKAR, J.)

The challenge is to the order passed against the petitioner, one A. Syed Ibrahim, dated 4.4.2002, by the State Government directing the preventive detention of the petitioner under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

2. A short background would be not out of place. The detenu landed at Anna International Airport, Chennai, on 28.2.2002. He was carrying two checked in baggages and one hand bag. He was carrying a declaration chit which suggested that he was declaring that the goods worth a lakh of rupees. He was allegedly intercepted and on examination of the baggage, it was found that he was carrying the goods worth 19 lakhs of rupees approximately. His statement was recorded where he claimed that one unknown person has given the goods and he was a receiver of Rs.5,000/- for taking the goods to India. He has also agreed that he was caught twice and the goods were ordered to be released on payment of redemption fine and penalty also. The detenu was then lodged in the jail and the further investigation began. However, on the basis of these materials collected, the detention order came to be passed on 4.4.2002, as has been stated earlier.

3. It is the case of the petitioner that while in incarceration, he sent a retraction letter dated 27.3.2002, which was given to the jail authorities for transmitting to the proper authorities on 28.3.2002. In this retraction letter, the earlier statement dated 28.2.2002 was completely retracted by the detenu giving his side of the story, perhaps claiming that he had not given a final declaration and even before the final declaration was given, he was nabbed by the authorities and had he been given a proper opportunity to give a declaration, he would have given the proper declaration covering the goods he was carrying.

4. Mr.K.A. Jabbar, learned counsel for the petitioner, presses the petition only on one point. He points out that retraction letter was admittedly a very relevant document and would have affected the psyche of the detaining authority, had that letter had been put before the detaining authority. The learned counsel claims that this letter, for no fault of the petitioner, was not kept before the detaining authority and as such, the detaining authority came to the conclusion of ordering detention, even without consulting the said retraction letter.

5. The learned counsel buttresses his point further by suggesting that admittedly this letter did not go before the detaining authority and later only it was put before the Advisory Board, as also before the State Government, at the time of confirmation of that detention order. The learned counsel suggests that the letter directed to be put before the Advisory Board as also before the State Government at the stage of Section 8(f) of the Act was a very material document and was bound to be considered before the decision was taken. That not having been done, the learned counsel suggests that the order is vitiated.

6. We were taken through the State counter. This question was raised

by the petitioner in paragraph 5(iv) of the affidavit, by way of counter. The State Government admits in the following terms.
"I submit that the said retraction letter sent through the jail authorities was received by the Customs Department on 28.3.2002, but was inadvertently sent to Adjudication Section along with other letters meant for Adjudication section received from the jail authorities. The existence of such a letter came to light only on the receipt of the representation dated 24.4.2002 of the detenu and efforts were taken to trace out the same and subsequently, it was located and received by the COFEPOSA Unit on 29.4.2002 and the same was sent to the State Government well before the State Advisory Board meeting held on 3.6.20 02. The above document received from the Sponsoring Authority have been placed before the State Advisory Board and considered by the detaining authority while confirming the detention of the detenu. In this connection, it is submitted that that retraction letter dated 27.3.2 002 was not received by the detaining authority before passing the detention order."

7. We have deliberately quoted the State affidavit, because it unequivocally admitted therein that firstly the letter was actually sent by the detenu and was received by the jail authorities as early as 28.3.2002. Not only this, but the retraction letter was also received by the Customs Department on 28.3.2002 itself, which was about seven days prior to the passing of the detention order. The State Government have tried to suggest that there was a honest mistake on the part of some of the employees in not sending the letter to the detaining authority, whereby it is almost admitted that this letter was bound to be considered by the detaining authority. There may be a mistake or may not be a mistake and the mistake may not be a deliberate one, but could be an innocuous mistake also. However, the fact of the matter is that a very important letter, which would have affected the psyche of the detaining authority, was not considered by the detaining authority and the detaining authority did not have before it the side of the

detenu, in which the detenu had pleaded that he was in fact not guilty of smuggling. If this is so, there would be no question of going further and the order would stand vitiated on this ground alone.

8. We have seen the letter which has been produced before us by the learned counsel and there is no dispute that it is this letter which was sent by the detenu to the Commissioner, Customs Department. Once that fact is established that the letter was sent to the Commissioner, Customs Department, it had to be sent to the detaining authority, as it cannot be imagined that the Sponsoring authority like the Commissioner would keep back the letter. We only say that even if it was an error, it was an fatal error which has resulted in vitiating the order. The writ petition therefore has to be allowed and the detention order is quashed.

Rule is made absolute. The detenu be released forthwith, unless he is required in connection with any other case. HCMP No.166 of 2002 is closed.

Index : Yes
Internet: Yes

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